



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Order 98-5-27

Issued by the Department of Transportation  
on the 20th day of May, 1998

SERVED: May 20, 1998

**1998 U.S.-BRAZIL COMBINATION SERVICE CASE**

**Docket OST-98-**

Applications of

**AMERICAN AIRLINES, INC.**  
**and**  
**UNITED AIR LINES, INC.**

**Dockets OST-97-3269**  
**and**  
**OST 97-3271**

for allocation of seven weekly U.S.-Brazil combination  
frequencies

Applications of

**CONTINENTAL AIRLINES, INC.**  
**and**  
**DELTA AIR LINES, INC.**

**Dockets OST-97-3273**  
**and**  
**OST-97-3151**

under 49 USC §§ 41108 and 41102 for certificates of  
public convenience and necessity and for U.S.-Brazil  
frequency allocations

**ORDER INSTITUTING PROCEEDING**

**Summary**

By this order we institute the **1998 U.S.-Brazil Combination Service Case, Docket OST-98-3863**, to select a carrier to operate the seven weekly frequencies available for U.S.-Brazil combination services effective October 1, 1998. We consolidate the frequency applications

of American Airlines, Inc., and United Air Lines, Inc., and the certificate/frequency applications of Continental Airlines, Inc., and Delta Air Lines, Inc., into this proceeding.

## **Background**

Under the U.S.-Brazil aviation agreement, four U.S. carriers may be designated to provide scheduled combination services. American, Continental, Delta, and United are the four designated U.S. combination carriers, with each carrier holding certificate authority to serve specific U.S.-Brazil city- pair markets and each carrier actually providing service.<sup>1</sup> The 98 weekly frequencies available for U.S. carrier combination services are currently allocated as follows: American, 49; United, 28; Continental, 14; and Delta, 7.

Under the terms of a Memorandum of Consultations, signed November 18, 1997, the four designated U.S. carriers may operate, effective October 1, 1998, a total of 105 weekly frequencies for combination services, which represents an increase of seven weekly frequencies over the current 98 frequency total.<sup>2</sup>

## **Applications and Responsive Pleadings**

Each of the four U.S. designated carriers has applied for the new frequencies that become available October 1, 1998. American and United seek only frequency allocations, and Continental and Delta filed for new certificate authority, as well as for frequency allocations to support their proposed services.<sup>3</sup>

American proposes service between Miami and Manaus with B757 aircraft; Continental between Houston and Sao Paulo with DC-10 aircraft<sup>4</sup>; Delta between New York (JFK) and Sao Paulo and Rio de Janeiro with B767-300 aircraft; and United between Los Angeles and Sao Paulo with B-777 aircraft.<sup>5</sup> All four carriers propose to begin service October 1, 1998, although Continental stated that it would begin service on October 1 or 120 days after receipt of all necessary governmental authority, whichever is later.

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<sup>1</sup> American and United also hold certain broader U.S.-Brazil-beyond exemption authority.

<sup>2</sup> U.S.-Brazil Memorandum of Consultations, dated November 18, 1997. The two delegations agreed to recommend that their respective governments apply the terms of the revised Annex on the basis of comity and reciprocity, pending conclusion of the Agreement by exchange of diplomatic notes.

<sup>3</sup> American, Continental and United filed separate motions to consolidate their respective applications with the other filed applications. We will grant the motions.

<sup>4</sup> Continental also states that it may substitute B-767 or B-777 aircraft in the future as those aircraft are delivered to Continental. It also states that it will file a joint code-share application in the near future with VASP for authority to provide code-share service at Sao Paulo and Rio de Janeiro, Belo Horizonte, Brasilia, Curitiba and Porto Alegre in conjunction with its authorized Newark services and that it also seeks authority here to offer such service in conjunction with its proposed Houston service. (We note that subsequent to Continental's application in Docket OST-97-3273 at issue here, Continental, Continental Express and VASP filed a joint application for code-sharing authority in Docket OST-98-3675 and appended their code-share agreement to the joint application. We approved Continental's requested code-share operations to all the aforementioned Brazil points by Notice of Action Taken, issued April 27, 1998.)

<sup>5</sup> United already holds the necessary underlying authority to serve the Los Angeles-Sao Paulo market on Route 632.

American, Continental, Delta and United filed answers or consolidated answers, and United filed a consolidated reply and a motion for leave to file. In addition, the City of Houston and the Greater Houston Partnership filed an answer in support of Continental's application and motion to consolidate.

Each applicant carrier argues that its application is superior to that of the others and objects to any other carrier's application to the extent it would preclude approval of its own application. Continental and Delta each argues that an award of seven frequencies will enable it to compete against the other carriers more effectively and better develop its South American route network. American argues that its selection will provide service to a Brazilian city which has no U.S. carrier services, and United argues that its selection will provide the first U.S. carrier service from Los Angeles to Brazil. All of the carriers request that the Department institute a selection proceeding to determine which carrier should be allocated the additional seven frequencies.

## **Decision**

We have decided to institute the **1998 U.S.-Brazil Combination Service Case** to select which of the designated U.S. carriers for U.S.-Brazil services should be allocated the additional seven weekly frequencies available October 1, 1998.

Since the authority at issue is available only to the existing designated carriers and since each of those carriers has submitted an application for the available authority, we will not solicit further applications for the new frequencies. We will consolidate the applications filed by those carriers into this proceeding.

Whether authorizing carriers for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute a valuable resource obtained in exchange for granting Brazil route opportunities for its airlines to serve the United States. The introduction of additional U.S. carrier service will provide new service options to travelers and shippers and will enhance competition in the U.S.-Brazil market. In these circumstances, we find that the public interest clearly calls for use of the rights.

In determining which carriers/gateways will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Brazil market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

The U.S.-Brazil agreement provides for beyond services to Paraguay, Uruguay, and Chile.<sup>6</sup> We are prepared to consider in this proceeding the award of beyond authority set forth in the agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreements.

In order to assure that the valuable route rights are not wasted, we intend to issue backup authority in this proceeding should the selected carrier not operate the proposed services. The carriers in this case have proposed service from different gateways. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure continuation of service from a particular gateway.

### **Procedures and Evidence**

We intend to process this case on an expedited procedural schedule to facilitate operations by the selected carriers as soon as possible. We believe that written, non-oral show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that no applicant requested oral, evidentiary procedures. This case, which is subject to Rule 22a(d) of our procedural regulations [14 CFR 302.22a(d)], will be assigned to the Department's Senior Career Official, who will be the DOT decisionmaker in this proceeding.

We have appended to this order an evidence request for the benefit of the parties in this case. In addition to the material requested, applicants and any other parties may submit any additional information that they believe will be useful to us in reaching a decision.

We will also require American, Continental, Delta, and United, the U.S. carriers currently providing combination service in the U.S.-Brazil market, to file the service data set forth in the attached Appendix (Appendix A at 2, Section III A.2). We believe that such data are necessary for a complete record in this case, and therefore, we are exercising our power under 49 U.S.C. 41708 to require these carriers to file these data. Also in keeping with our goal of ensuring a complete record, we have specifically requested evidence that will enable us to weigh the merits of proposals from applicants that may be operating both on a direct service as well as a code-share basis.

Consistent with our policy with respect to limited-entry route rights, we will award the U.S.-Brazil authority at issue in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c), where applicable. The

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<sup>6</sup> Currently, additional rights to serve Chile are not available. While the United States and Chile have negotiated an open-skies bilateral agreement that would make available additional rights to serve Chile, that agreement has not yet been signed or entered into force.

duration of authority will be five years for the primary carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years.<sup>7</sup> The frequency allocation would be of indefinite duration, but subject to the continued effectiveness of the holder's underlying certificate authority as well as to our standard condition that we may amend, modify or revoke the allocation at any time and without hearing, at our discretion.

In addition, consistent with our standard practice, the frequencies allocated in this proceeding will be subject to our standard 90-day dormancy condition, wherein frequencies will be deemed dormant if they are not operated for 90 days, except where service in the market is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition, if flights allocated are not used for 90 days, the frequency allocations expire automatically, and the frequencies revert to the Department for reallocation.

### **Procedural Timetable**

The new rights for U.S. carriers to serve Brazil become effective October 1, 1998. We believe that it is in the public interest to select carriers on a timetable that will allow the selected carrier(s) to enjoy the maximum benefit of these rights as close to the availability date as possible. Therefore, we intend to proceed on an expedited basis. To this end, we are establishing the following procedural schedule for submissions in this case:

DOT Information Responses:	June 5, 1998
Carrier Information Responses:	June 5, 1998
Petitions for reconsideration:	May 29, 1998
Answers to petitions for reconsideration:	June 3, 1998
Direct Exhibits:	June 26, 1998
Rebuttal Exhibits:	July 17, 1998
Briefs:	August 7, 1998

All dates are delivery dates. An original and four copies of all submissions are to be received by the Department of Transportation, Dockets, no later than the dates indicated.<sup>8</sup> Due to the expedited nature of this case, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

### **ACCORDINGLY,**

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<sup>7</sup> See Section 399.120 of our regulations. We remind the applicants that in cases such as this where we are making selections and awarding authority for limited entry markets, it is our practice to issue certificate authority only for the markets the carriers actually have submitted a proposal to serve.

<sup>8</sup> The original filing should be on 8½"x 11" paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

1. We institute the **1998 U.S.-Brazil Combination Service Case**, Docket **OST-98-3863** to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);
2. The proceeding instituted in ordering paragraph one will consider the following issues:
  - a. Which primary and backup carrier(s)/gateways should be selected to provide service between a point in the United States and a point or points in Brazil, consistent with the provisions of the amended U.S.-Brazil aviation agreement using the seven weekly frequencies that become available for U.S. carrier combination services on October 1, 1998;
  - b. What other authorities, including route integration authority, should be granted in conjunction with the Brazil services authorized in this proceeding; and
  - c. What terms, conditions, and limitations should be imposed on any existing certificate authority, and any new certificate authority awarded in this proceeding;
3. We consolidate the applications of American Airlines, Inc., Docket OST-97-3269, Continental Airlines, Inc., Docket OST-97-3273, Delta Air Lines, Inc., Docket OST-97-3151, and United Air Lines, Inc., Docket OST-97-3271 into the **1998 U.S.-Brazil Combination Service Case**, Docket **OST-98-3863** ;
4. We require that petitions for reconsideration of this order be filed no later than May 29, 1998; answers to such petitions shall be due no later than June 3, 1998;
5. We grant all motions for leave to file otherwise unauthorized documents, for leave to file late, and to consolidate applications filed for contemporaneous consideration; and
6. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; the City of Houston and the Greater Houston Partnership; the Ambassador of Brazil in Washington, DC; and the U.S. Department of State (Office of Aviation Negotiations).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web  
<http://dms.dot.gov/general/orders/aviation.html>.*

## **EVIDENCE REQUEST**

### **I. Public Disclosure of Data**

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1995, through a final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1994, through final Department decision in this proceeding, for operations between the United States and Brazil, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

### **II. Procedures and Ground Rules**

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

### **III. Request for Information and Evidence**

#### **A. Information Responses**

##### **1. DOT Data**

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:<sup>1</sup>

- (a) T-100 nonstop segment data, by month, beginning January 1, 1995, through the latest available month, between the United States, on the one hand, and Brazil, on the other.
- (b) T-100 on-flight market data, by month, beginning January 1, 1995, through the latest available month, between the United States, on the one hand, and Brazil, on the other.

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<sup>1</sup> Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of the information requests on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Economic & Financial Analysis Division, at (202) 366-2352. The Department will make this material available no later than the date specified in the text of this order.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

(c) For the Calendar Years 1994 through September 30, 1997, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Rio de Janeiro, Sao Paulo, and Manaus, Brazil.

(d) For the 12 months ended September 30, 1997, from the Department's O&D Survey between all U.S. points, on the one hand, and Rio de Janeiro, Sao Paulo, and Manaus, Brazil, on the other, that used the following gateways: Atlanta, Dallas/Ft. Worth, Houston, Los Angeles, Miami, New York, Orlando, Washington, DC and "all others."

2. Incumbent Data (American, Continental, Delta, and United)

For each month for the twelve months' ended December 1997, provide the number of flights and complete flight itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Brazil market, and the type aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish flights operated under code share and those which are not operated under code share.

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. This information shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand, particularly if the source is other than the Department's O&D Survey. Indicate growth rates, stimulation rates, and participation rates, as well as the bases for such rates.<sup>2</sup>

The source data for traffic forecasts made by any party shall be (1) the O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources. Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data).

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<sup>2</sup> The base year for traffic forecasting purposes should be 12 months ended September 30, 1997, and the forecast year should be the 12 months ended September 30, 1999.



## 1. Applicant Carriers

Submit, at a minimum, the following:<sup>3</sup>

(a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending September 30, 1999).

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

(b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending September 30, 1999. The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;

(c) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate

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<sup>3</sup> The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel® (version 5.x or earlier), Lotus 1-2-3® (version 3.x or earlier), Microsoft Word® (version 6.x or earlier), or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties using other software may either (1) file IR's, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael Lane at 202-366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

(d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;

(e) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Brazil service operated by a foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s).<sup>4</sup> If in an existing code-share relationship with carriers involving the U.S.-Brazil market, provide in detail a description of whether proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partners. Any carrier operating under a code-share agreement that has not filed that agreement with the Department, should provide a copy of that agreement in its direct exhibits. If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served and traffic forecasts.

(f) Responses to the following interrogatories:<sup>5</sup>

(1) Will the carrier, if selected as backup, accept a condition on its authority which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

(2) Will the carrier selected for primary authority accept a condition on its award requiring institution of service by a date specified by the Department? What date should the Department specify?

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<sup>4</sup> Traffic forecasts under III.B.1(b), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

<sup>5</sup> Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate and frequency allocation issued will be for one year.